



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2018

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jaran Holder
Holderdown Performance, LLC
10918 US Hwy 50
North Bend, Ohio 45052

Re: Finding of Violation for Clean Air Act Violations

Dear Mr. Holder:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Holderdown Performance, LLC (HDP) for violating Section 203(a)(3)(A) and (B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a)(3)(A) and (a)(3)(B). As summarized in the attached FOV, EPA has determined that HDP has removed and/or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines, and has manufactured, installed, sold or offered to sell parts or components for motor vehicle engines that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Sarah Clark. You may call her at (312) 886-9733 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



Edward Nam
Director
Air and Radiation Division

Enclosure

IN THE MATTER OF:

FINDING OF VIOLATION

EPA-5-18-OH-15

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to Holderdown Performance, LLC (“HDP” or “you”) for violating Sections 203(a)(3)(A) and (B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a)(3)(A) and (B).

1. Title II of the CAA was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles...has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).
2. Section 216(2) of the CAA defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” *see also* 40 C.F.R. § 85.1703 (further defining “motor vehicle”). These definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use (e.g., claim that a vehicle is used solely for competition).
3. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants applicable to motor vehicles and motor vehicle engines, including heavy-duty diesel engine (“HDDE”) trucks, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86. HDDE emission standards “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
4. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling a new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered

by a certificate of conformity (COC). EPA issues COCs to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C.

§ 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The COC will include, among other things, a description of the diesel engines, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

5. HDDE manufacturers employ many devices and elements of design to meet emission standards. "Element of design" means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine." *See* 40 C.F.R. §§ 86.094-2 and 86.1803-01.
6. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, HDDE manufacturers may utilize control devices or elements of design such as Exhaust Gas Recirculation (EGR), Diesel Oxidation Catalyst (DOC), Diesel Particulate Filter (DPF), and/or Selective Catalytic Reduction (SCR) systems.
7. HDDE manufacturers may also employ engine fueling strategies, such as retarded fuel injection timing, as a primary element of design to limit emissions of NO_x. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) ("[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x...").
8. Modern HDDE trucks, are equipped with electronic control modules ("ECMs"). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the EGR, DOC, DPF, and SCR systems and the engine fueling strategy.
9. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), the EPA promulgated regulations for motor vehicles manufactured after 2007 that require diesel engine motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle's emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as "onboard diagnostic systems" or "OBD" systems.
10. Section 203(a)(3)(A) of the CAA prohibits "any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser."
11. Section 203(a)(3)(B) of the CAA prohibits "any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to

bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

Background

12. HDP is a diesel engine motor vehicle repair shop and diesel engine motor vehicle aftermarket parts seller and installer located in North Bend, Ohio.
13. HDP is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
14. On December 18, 2017, EPA issued to HDP a request for information under Section 208 of the CAA, 42 U.S.C. § 7542, requesting information related to HDP’s purchase, production, sale, distribution, installation, and advertisement of diesel engine motor vehicle and diesel engine parts or components between December 1, 2015 and December 18, 2017.
15. On March 23, 2018, HDP provided an initial response to EPA’s request for information that included invoices and a spreadsheet (the spreadsheet). The invoices included records for the sale and/or installation of select diesel engine parts and components for the period from July 1, 2015 to August 6, 2015 (and one invoice dated December 7, 2016). The spreadsheet included details and sales information for select diesel engine parts and components that HDP purchased, sold, and/or installed for the years 2015, 2016, and 2017 (and, in the case of Flo~Pro Performance products, for the years “2014-present day”). Each product identified in the spreadsheet was listed as compatible with ‘Ford Vehicles’ or ‘Ford Power Stroke,’ and each product was listed with the expected use of “on road diesel.”
16. On May 22, 2018, HDP provided a supplemental response to EPA’s request for information that included additional invoices for the sale and/or installation of select HDDE parts and components for the period from August 21, 2015 to December 21, 2017.
17. On May 23, 2018, EPA emailed HDP to request HDP’s purchase receipts, installation or operational manuals, and social media advertisements for the diesel engine parts and components identified in HDP’s previous responses.
18. On July 11, 2018, HDP provided information that included receipts for the purchase of diesel engine parts and components from Jobbers Exhaust (Lexington, Kentucky) for the period from February 24, 2015 to December 19, 2017 and two screenshots of one of HDP’s social media accounts showing advertisements for Flo~Pro and EZ LYNK products. In an email to EPA, HDP’s counsel stated that they would continue to supplement the file.
19. On September 17, 2018, EPA emailed HDP to request a timeline for HDP’s response and/or the information that HDP stated they would provide. EPA received email responses from HDP’s counsel that the owner of HDP has shut down the diesel engine motor vehicle repair shop in North Bend, Ohio and moved out of state.

20. On September 20, 2018, EPA collected evidence that HDP is still operating through its website (holderdown.com) and multiple social media pages.
21. The spreadsheet indicated that HDP sold and/or installed 184 tunes and/or tuner products manufactured by Bully Dog, EZ LYNK, and SCT Performance. These products (“Defeat Tuners or Tunes”) consist of software and/or devices that render inoperative the original programming of an HDDE truck’s ECM and alter fuel timing maps within an ECM’s electronic calibrations and/or modify an ECM’s calibrations governing emission control devices to disable and/or allow for removal of a EGR, DOC, DPF, and/or SCR system without illuminating a malfunction indicator lamp in the truck’s OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating or malfunctioning due to deactivation or removal of an emission control device. The spreadsheet also indicated that HDP sold and/or installed 173 other parts or components that disable, remove, bypass, defeat, or render inoperative the EGR, DOC, DPF, and/or SCR systems on HDDE trucks (“Delete Parts or Components”) that were manufactured by Outlaw Diesel Performance and Flo~Pro Performance Exhaust. These records are summarized in Attachment A, Table A-1.
22. The invoices indicated that HDP sold and/or installed 4 additional Defeat Tuners or Tunes that were manufactured by H&S. The invoices also indicated that HDP sold and/or installed 17 additional Delete Parts or Components that were manufactured by AFE, Bullet Proof, Diamond Eye Performance, and No Limit. These records are summarized in Attachment A, Table A-2.
23. The parts and/or components manufactured, sold, offered for sale, and/or installed by HDP are intended for “motor vehicles” as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2). Specifically, the parts and/or components are designed for use on makes and models of HDDE motor vehicles, including Ford Power Stroke diesel engine pick-up trucks, for which their respective manufacturers have obtained COCs establishing compliance with CAA emissions standards.
24. The information provided by HDP shows that HDP knowingly removed or rendered inoperative the air pollution emission control devices or elements of design installed on or in such HDDE trucks in compliance with Title II of the CAA.
25. Information provided by HDP shows that HDP manufactured, sold, offered for sale, and/or installed at least 378 parts or components, intended for use with, or as part of, any motor vehicle or motor vehicle engines, where a principal effect of each part or component was to remove, bypass, defeat, or render inoperative air pollution emission control devices or elements of design, such as the engine fueling strategy, DPF, EGR, DOC, SCR, and/or OBD systems and emissions-related elements of design within the ECM, installed on or in motor vehicles in compliance with Title II of the CAA, and HDP knew or should have known that such part or component was being offered for sale or installed for such use or put to such use.
26. EPA finds that the parts and components manufactured, sold, offered for sale, and/or installed by HDP are intended for “motor vehicles” as defined by Section 216(2) of the

CAA. As a legal matter, there is no “off-road use only” or “competition only” exemption under the CAA for motor vehicles or motor vehicle engines. “Motor vehicle” is defined as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” CAA § 216(2); 42 U.S.C. § 7550(2); *See also* 40 C.F.R. § 85.1703 (further defining “motor vehicle”). These definitions make no exemption for motor vehicles or motor vehicle engines used for competition.¹ More generally, these definitions are based on vehicle attributes (*e.g.*, ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use.

27. The EPA has consistently adhered to the plain language definition of “motor vehicle.” *See, e.g.*:
 - a. 39 Fed. Reg. 32,609 (Sept. 10, 1974) (EPA rejecting proposal to exempt from the definition of “motor vehicle” certain vehicles “based solely on the intended use by the purchaser” because “[t]he Agency views a policy of exclusion based upon owner intent to be virtually unmanageable and inconsistent with the Act because vehicles with on-road, off-road capabilities are typically operated in both situations”);
 - b. EPA, *Fact Sheet: Exhaust System Repair Guidelines* (Mar. 13, 1991) (explaining that “it is not legal for anyone to ‘de-certify’ a motor vehicle for ‘off-road’ use,” and that it is not legal to bypass, defeat, or render inoperative a motor vehicle emission control system as that system was designed by the manufacturer, even where that system was already defeated);
 - c. EPA fact sheet describing settlement of *United States v. Casper’s Electronics, Inc.*, Civ. No. 1:06-cv-03542 (N. D. Ill.) (July 10, 2007), <http://www2.epa.gov/enforcement/caspers-electronics-inc-clean-air-act> (last visited September 27, 2018) (“These [defeat] devices were advertised for ‘off road use only’ or ‘non-road use only.’ However, the O₂ Sims were designed and marketed to be used in regular production vehicles (‘on road or ‘on highway’ vehicles), which is illegal under the Clean Air Act.”); and
 - d. EPA Presentation at November 2010 Specialty Equipment Market Association Show, *Diesel Aftermarket Parts Discussion* (“Question 1: Am I protected from selling a defeat device or tampering as long as I inform my customers that they can only use my parts ‘off-road’ or ‘for racing use only’ or that the parts are ‘not for installation on emission-controlled vehicles’? Answer: No, if the parts are designed for and intended to be installed on certified motor vehicles, EPA considers you to still be liable under the CAA prohibited acts.”).

¹ In contrast, the CAA exempts from the definition of “nonroad vehicle” and “nonroad engine” those vehicles and engines used solely for competition. CAA § 216(10)-(11); 42 U.S.C. § 7550(10)-(11). EPA has implemented regulations describing how to exempt from CAA requirements nonroad vehicles and engines used solely for competition. 40 C.F.R. § 1068.235. These regulations explicitly do not apply to motor vehicles and motor vehicle engines. 40 C.F.R. § 85.1701(a)(1).

Violations

28. HDP knowingly removed and/or rendered inoperative devices or elements of design installed in or on HDDE motor vehicles by installing or modifying software on HDDE ECMs to allow the HDDEs to operate without EGR, DOC, DPF, and/or SCR systems and installing parts or components that removed and/or bypassed EGR, DOC, DPF, and/or SCR systems, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).
29. HDP manufactured, sold, offered to sell, and/or installed parts or components, intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principal effect of the part or component was to bypass, defeat or render inoperative elements of design that control emissions, such as the engine fueling strategy, EGR, DOC, DPF, SCR, OBD systems and/or other elements of design on motor vehicles and motor vehicle engines, and HDP knew or should have known that such part or component was being offered for sale or installed for such use or put to such use, in violation Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Environmental Impact of Violations

30. These violations may result in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

Enforcement Authority

31. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Any person who violates Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), is subject to an injunction under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,619 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Date

9/28/18

Edward Nam

Director

Air and Radiation Division

Attachment A

Table A1: Defeat Tuners and Tunes and Delete Parts and/or Components sold and/or installed by HDP for the years 2015, 2016, and 2017 (and, in the case of Flo-Pro Performance products, for the years “2014-present day”), as recorded in the spreadsheet provided by HDP.

Manufacturer	Product Name	Product Number	Effect on Motor Vehicle and Engine Emission Control Systems and Elements of Design	Approximate Quantity of Product Sold and/or Installed
Bully Dog	Bully Dog GT	40420	Alters design parameters in the OEM calibration; increases NO _x emissions in excess of the NO _x standard based on EPA testing	1
EZ Lynk (Anarchy Diesel Tuning, PPEI)	EZ Lynk Auto Agent EZ Lynk Power Package	887667 112367	HDP's website and invoices indicate that HDP sells and/or installs EZ Lynk products containing tunes such as PPEI Support Pack/Custom Tunes/Shift on the Fly and Anarchy Diesel Tuning that alter fuel timing maps within engine electronic calibrations and allow removal of DOC, DPF, or SCR systems or disabling of an EGR system (depending on the vehicle) without illuminating a MIL, prompting any DTC, or causing any engine derating.	14
Outlaw Diesel Performance	6.0 EGR Upgrade 6.4 EGR Upgrade 6.7 EGR Upgrade	554060 554064 554067	Removes and/or bypasses EGR	141
Flo-Pro Performance Exhaust	Flo Pro Exhaust	824NM 614NM 833 NB 633 NB	Removes and/or bypasses DOC or DOC and DPF, depending on the vehicle	32
SCT Performance	SCT LiveWire TS SCT X4	5015 7015	Disables EGR system or OBD oxygen sensors, depending on the vehicle	169

Table A2: Defeat Tuners and Tunes and Delete Parts and/or Components sold and/or installed by HDP for the period from July 1, 2015 to December 21, 2017, as identified in the invoices provided by HDP.

Manufacturer	Product Name	Effect on Motor Vehicle and Engine Emission Control Systems and Elements of Design	Date	Invoice No.
AFE	Exhaust/Pipe	Removes and/or bypasses DOC and DPF	1/15/2016	329
			12/21/2016	673
Bullet Proof	"Complete EGR Delete (Bullet Proof EGR)"	Removes and/or bypasses EGR	7/1/2015	104
			7/14/2015	124
Diamond Eye Performance	5in Diamond Eye LB7	Removes and/or bypasses DOC	7/31/2015	150
H&S	Mini Maxx Tuner	Alters fuel timing maps within engine electronic calibrations and allows removal of DOC, DPF, or SCR system or disabling of an EGR system without illuminating a MIL, prompting any DTC, or causing any engine derating.	8/21/2015	175
			12/21/2016	673
			5/4/2017	825
			12/18/2017	1086
No Limit	EGR Delete	Removes and/or bypasses EGR	2/22/2016	383
			6/14/2016	494
			9/12/2016	586
			8/17/2017	950
			8/30/2017	956
			9/26/2017	984
			10/31/2017	1030
			11/2/2017	1035
			11/27/2017	1054
			12/18/2017	1086
			12/20/2017	1091
			12/21/2017	1094

CERTIFICATE OF MAILING

I certify that I sent a Finding of Violation, No. EPA-5-18-OH-15, by Certified Mail, Return Receipt Requested, to:

Jaran Holder
Holderdown Performance, LLC
c/o Stewart D. Cables
Hassan and Cables
1035 Pearl Street
Boulder, CO 80302

I also certify that I sent a Finding of Violation, by e-mail to:

Bob Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
bob.hodanbosi@epa.ohio.gov

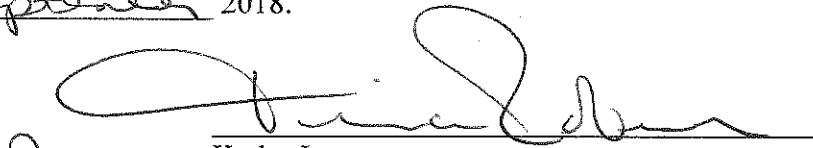
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and

Stewart D. Cables
stewart@hassancables.com

On the 28th day of September 2018.


Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 70170530000062887606